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November 27, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: June 22, 2007

Case Number: TSO-0508

This decision concerns the eligibility of XXX XXX (hereinafter referred to as "the Individual") to obtain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be granted. For the reasons stated below, I find that the Individual's request for an access authorization should not be granted.

**I. BACKGROUND**

A background investigation of the Individual revealed derogatory information. As a result, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on January 31, 2006. Exhibit 6. The January 31, 2006, PSI failed to resolve many of the security concerns raised by the derogatory information concerning the Individual. Accordingly, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has "engaged in . . . unusual conduct or is subject to . . . circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility . . . or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l) (Criterion L). The Notification Letter also alleges that the Individual has

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<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

“Deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization . . . .” (Criterion F).

Specifically, the Notification Letter alleges that the Individual: (i) has a history of failing to meet his financial obligations; (ii) provided false or misleading information during the January 31, 2006, PSI; (iii) misused company credit cards and cell phone while employed by two previous employers; (iv) provided false or misleading information to an Office of Personnel Management (OPM) investigator conducting a background investigation of the Individual; (v) provided false or misleading information in a Questionnaire for National Security Positions (QNSP) dated September 1, 2005; and (vi) failed to provide information that he had promised to provide to LSO security officials.

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA) who appointed me as Hearing Officer.

At the Hearing, the LSO presented one witness, the Personnel Security Specialist (the PSS) who had conducted the January 31, 2006 PSI. The Individual presented no witnesses. However, the Individual testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0508 (hereinafter cited as “Tr.”).

## **II. STANDARD OF REVIEW**

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

## **III. FINDINGS OF LAW AND FACT**

On September 1, 2005, the Individual signed and dated a QNSP. Exhibit 7. The information

provided by the Individual in this QNSP affirmatively indicated that he: (a) had never been a party to a civil court action, (b) had not been over 180 days delinquent on any debt during the past 7 years,<sup>2</sup> (c) was not currently 90 days or more delinquent on any debt, and (d) had never left a job under negative circumstances. Exhibit 7 at 7-9.

Subsequently, an OPM investigator began a routine background investigation of the Individual. OPM's investigation revealed derogatory information concerning the Individual. Specifically, the OPM investigation revealed that the Individual had at least nine seriously delinquent debts. Exhibit 8 at 1. On November 18, 2005, the Individual told the OPM investigator that his financial condition was good and that he was not late on any payments. OPM Report at 10. The OPM investigation also revealed derogatory information concerning two of the Individual's past employers. Employer A reported that the Individual had been counseled for misuse of a corporate credit card. Employer B reported that the Individual had used a cell phone, which had been assigned to an employee who had left the company, to make \$200 worth of personal calls. Employer B also reported that the Individual had rented cars for personal use on a company credit card. OPM Report at 5. The charges from the misuse of the car rental company card totaled over \$25,000. *Id.* at 7.

During the PSI, the Individual indicated that debts revealed by the OPM investigation were the fault of his ex-fiancée. The Individual initially stated that he had maintained joint credit accounts with this ex-fiancée who then, unbeknownst to the Individual, unilaterally changed the accounts from joint accounts to accounts held solely by the Individual. Transcript of PSI (hereinafter cited as PSI) at 10-14, 26-30. The Individual admitted that he never paid these debts. PSI at 14. The Individual also speculated that some of the unpaid debts were incurred by his brother, who has a very similar name. PSI at 15. The Individual also denied knowledge of several of the debts that appeared in his credit report. PSI at 19, 24-25, 34, 36. The Individual admitted that he had a judgment for a past due credit card account in 2002. PSI at 20-21. The Individual noted that he had paid this judgment. PSI at 23. The Individual also asserted that another debt appearing on his credit report had been paid. PSI at 30-32. The Individual did admit some of his debts. PSI at 35, 74. On many occasions during the PSI, the LSO officials indicated that the Individual needed to provide documentation to support his assertions. PSI at 18, 20, 27, 31, 35, 37, 50-51, 75, 80.

During the PSI, the Individual was asked if he had any kind of employment problems with his past employers. The Individual answered "no." PSI at 54. The Individual was then repeatedly asked if he had ever been reprimanded or counseled. The Individual repeatedly answered "no." *Id.* at 54-56. When he was subsequently specifically asked if he had ever used an employer's cell phone for personal use, the Individual denied doing so. *Id.* at 59. The Individual was then asked if a supervisor had ever confronted him about a cell phone bill. The Individual denied that incident. PSI at 60. The Individual denied misusing the car rental company credit card. PSI at

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<sup>2</sup> The Statement of Charges asserts that the Individual provided false information in his QNSP when he answered "no" to Question 27d. Statement of Charges, Paragraph II.A. Question 27d asked "in the past 7 years, have you had any judgments against you *that have not be[en] paid?*" Exhibit 7 at 8 (emphasis supplied). The record shows that the Individual satisfied this debt in 2003. Therefore, this allegation is no longer at issue in this case. Tr. at 24; PSI at 23.

62. The Individual claimed that an employee who actually misused the car rental company credit card accused him of misuse in order to deflect blame. PSI at 62.

At the hearing, the DOE submitted a copy of a recent credit report of the Individual. The credit report, dated August 22, 2007, indicated that the Individual still had not resolved four of the nine delinquent debts identified by the OPM investigation. Tr. at 9, 11-13, 19. Moreover, two new delinquent debts appeared in the Individual's credit record. Tr. at 9-10, 13. In several instances, the PSS testified that the Individual had promised to provide documentation of his assertions or of his subsequent satisfaction of debts, but had not done so. Tr. at 17-18, 22-23, 33-34.

At the hearing, the Individual testified that he was not reprimanded by either Employer A or Employer B. Tr. at 42. The Individual further testified that he had left both employers on good terms. *Id.* The Individual testified that his financial difficulties have resulted from his having to support two sick parents. Tr. at 42-43. The Individual testified that most of his income goes towards supporting his parents. Tr. at 49. Interestingly, the Individual testified that "I have never had a judgment against me. Never." Tr. at 46. The Individual also testified that he has actually paid off one of the outstanding debts appearing on the August 22, 2007, credit report. Tr. at 51.

The record shows a well established long-term pattern of unpaid debts appearing on the Individual's credit reports. The Individual has variously attributed this pattern to an ex-fiancée's fraudulent behavior, a case of mistaken identity, and "hard times" resulting from his support of his sick parents. The Individual admitted that he had at least a year to investigate and resolve the reports of debts appearing in credit reports. Tr. at 53. Yet at the hearing, the Individual continued to maintain that he was unaware of some of the debts listed in the August 22, 2007, credit report. Tr. at 52. Moreover, the Individual has consistently claimed that he never incurred some of the debts in question, but has not submitted any documentation whatsoever that he has contacted these creditors and attempted to clear his name. The Individual has claimed to have paid off other debtors, but has not submitted any documentation showing that he has done so. These facts suggest three possibilities, i.e., that the Individual is not being candid when making these claims, has not attended to a serious problem involving the reporting of his financial condition, or neglected his opportunity to resolve the serious doubts raised about his eligibility for an access authorization by the debts appearing in his credit reports. None of these possibilities reflect favorably on the Individual's judgment and reliability.

Moreover, the evidence in the record shows that the Individual is not trustworthy. Two past employers have, under oath, accused the Individual of using company credit cards for personal use. One of those employers also claims that the Individual used a cell phone assigned to another employee to make personal phone calls that were, in turn, billed to the employer.<sup>3</sup> The Individual has consistently denied these employers' claims, but has offered no evidence, other than his denials, in support of these denials.

As discussed above, the Individual also claimed that the debts appearing on his credit reports

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<sup>3</sup> Managers at both employers provided the OPM Investigator with sworn affidavits in support of these accusations. Exhibit 3 at 16-24. Employers A and B are completely separate and independent of each other.

were fraudulently incurred by an ex-fiancée. Yet the Individual has offered no evidence, other than his testimony, that any of his debts were actually incurred by this ex-fiancée, or that he has taken any action to address that situation.

I note also that the Individual frequently contradicted himself in this proceeding. For example, several of the credit reports in the record indicate that that a creditor (Creditor X) obtained a judgment against the Individual in 2002. During the PSI, the Individual admitted that Creditor X had obtained a judgment against him for a past due credit card account in 2002. PSI at 20-21. However, the Individual's answers to the QNSP in 2005 indicated that the Individual had never been 90 days delinquent on a debt or had a court action filed against him. Exhibit 7 at 9. Moreover, at the hearing, the Individual emphatically testified that he had never had a judgment against him. Tr. at 46. This example shows conclusively that the Individual cannot be relied upon to provide truthful or accurate information.

A finding of derogatory information does not, however, end the evaluation of evidence concerning an individual's eligibility for access authorization. See *Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in deciding whether the individual's access authorization should be granted after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of mitigation to resolve the security concerns raised by his long-standing financial irresponsibility and provision of false or misleading information. After considering all of the evidence in the record, I find that he has not.

Once a pattern of financial irresponsibility has been established, an individual must demonstrate a new pattern of financial responsibility in order to mitigate or resolve the security concerns raised by the established pattern of financial irresponsibility. *Personnel Security Hearing (Case No. TSO-0170)*, 29 DOE ¶ 82,811 (2006); *Personnel Security Hearing (Case No. VSO-0108)*, 26 DOE ¶ 82,764 at 85,699 (1996). In the present case, the Individual has not even begun to take the first steps necessary to establish a pattern of financial responsibility.

The Individual's testimony made it clear that he either did not have a clear picture of his current financial situation or was unwilling or unable to share it with me. The Individual needed to submit a clear and specific listing of the sources and amounts of his current income. Then the Individual needed to submit an accurate and detailed list of his current expenses and outstanding obligations and establish that he had prepared a budget that would meet his current obligations and make acceptable progress towards paying his outstanding obligations. Finally, the Individual needed to establish that he had implemented and followed the budget for a suitable time period. However, the Individual failed to establish that he had met any of these requirements.

After considering the entire record, which shows that the Individual has a history of financial irresponsibility and has yet to establish a pattern of financial responsibility, I find that the questions about his financial responsibility have not been resolved in the Individual's favor.

More importantly, because the Individual has continued to make false or misleading assertions throughout this proceeding, the security concerns raised about his trustworthiness remain unresolved.

#### **IV. CONCLUSION**

The evidence in the record paints a troubling picture of the Individual. Over a long-standing period, the Individual has consistently failed to meet his financial obligations. Moreover, the Individual has failed to be honest and candid with DOE Security officials. These issues raise particularly serious doubts about the Individual's credibility, judgment, reliability, and ability or willingness to obey rules and follow regulations.

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria F and L. Therefore, the Individual has not demonstrated that granting him a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not be granted at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: November 27, 2007